

REMARKS/ARGUMENTS

Favorable consideration of this application is respectfully requested.

Claims 1-21 are pending in this application. Independent Claims 1, 19, and 20 have been amended to better define the term “collision” as occurring “when the first transaction and the second transaction are accepted at the same time as concurrent transactions for accessing the same location of the hierarchical data” and to better highlight that the “processing for avoiding the collision” involves the “collision due to the concurrent transactions.” These amendments are clearly supported by the specification, for example note page 27, lines 5-15. In addition, Claim 21 is added to express the invention in terms of “temporally overlapping transactions” instead of using the corresponding language “when the first transaction and the second transaction are accepted at the same time as concurrent transactions,” and uses the term “conflicts” (as between these temporally overlapping transactions) instead of the corresponding term “collisions.” Accordingly, no new matter has been introduced.

The outstanding Official Action presented a rejection of Claims 20 under 35 U.S.C. §101 again asserting that this claim is directed to non-statutory subject matter and a rejection of Claims 1-20 as being anticipated by Iline et al. (U.S. Published Patent Application No. 2004/0068491, Iline).

The rejection of Claims 20 under 35 U.S.C. §101 is believed to be overcome by the amendment filed under 37 CFR § 1.116 on August 22, 2007, that adopted the suggestion at the middle of page 3 of the outstanding Action in terms of adding the language “ loaded in a processor” after each recital of a “computer program code.” Accordingly, it is respectfully submitted that this rejection of Claim 20 under 35 U.S.C. §101 has been overcome.

The amendment filed under 37 CFR § 1.116 on August 22, 2007, further presented a brief review of the present invention noting that independent Claims 1, 19, and 20 clearly

require producing a copy of the hierarchal data at a time of starting an access to the hierarchical data as to each transaction. Writing access as to each transaction is then made as to its respective copy, while avoiding a “collision” with accesses as to other transactions. Thus, it was noted that the present invention includes three primary technical elements in terms of requiring i) hierarchal data; ii) functions or commands to access this hierarchal data; and iii) a procedure for processing a plurality of the transactions that includes the improvement that avoids “collisions.”

The present amendment requires that the term “collision” has only the meaning that “the first transaction and the second transaction are accepted at the same time as concurrent transactions for accessing the same location of the hierarchical data” and that the “collisions” being avoided are those “due to the concurrent transactions.”

As further noted in the Amendment filed under 37 CFR § 1.116 on August 22, 2007, Iline only teaches, i) hierarchal data and ii) functions or commands to access this hierarchal data, and that the thrust of Iline is to use a restricted access model data structure (e.g., like that in FIG.4) to implement the functions or commands to access this hierarchal data. Thus, it was noted that there are no teachings or suggestions of the third element of a procedure for processing a plurality of the transactions that includes the improvement that avoids collision.

The Advisory Action mailed September 6, 2007, suggests that paragraph [0011] of Iline can be interpreted to teach “the claimed limitation ‘avoiding a collision’” by making the completely unwarranted assumption that “collision” can be **reasonably** said to mean “when two or more items should be kept in the same location.” No authority for this arbitrary definition is offered nor is any explanation presented as to how this arbitrary definition is compatible with the use of this term in the specification and claims. Thus the unsupported conclusion that Iline teaches “preventing the second writer node from writing data to a first data store, and preventing the first writer node from writing data to a second data store”

means “collision” is an improper subjective conclusion. Such reliance on completely subjective conclusions is contrary to established case law requiring the PTO to present factual evidence, not assumptions or subjective conclusions. *See In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (“With respect to core factual findings in a determination of patentability, however, the [PTO] . . . must point to some concrete evidence in the record in support of these findings.”); *In re Lee*, 277 F.3d at 1343-44, 61 USPQ2d at 1434 (This factual question . . . material to patentability [cannot] be resolved on subjective belief and unknown authority.”); and *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967) (“The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.”).

In any event, the PTO subjective conclusion as to the meaning of “collision” is no longer relevant as it is the definition of “collision” set forth in independent Claims 1, 19, and 20 that controls, not an assumed definition by the PTO.

Also, paragraph [0053] of Iline is further improperly expanded by PTO assumptions that the data corruption mentioned in this paragraph can be **reasonably** extrapolated to the possibility of corruption from “collisions” in the paragraph beginning “It is noted” and the paragraph beginning “Secondly.” What paragraph [0053] of Iline **reasonably** teaches is that “**malicious client code** is restricted to with respect to its ability to corrupt stored data” (emphasis added) and no other corruption, such as from the PTO suggested possibility of collisions. To the extent that the PTO is to continue to suggest that Iline teaches corruption from “collisions,” it must indicate where this teaching (not the teaching that “malicious client code is restricted to with respect to its ability to corrupt stored data”) is found in Iline. *See In re Rijckaert*, 9 F. 3d 1531, 1533, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (“When the PTO

asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference.”). Further note that the above-noted *Zurko*, *Lee*, and *Warner* decisions that prohibit PTO expansion of reference teachings using unfounded assumptions and/or speculation in place of actual reference teachings.

The above-noted *Zurko*, *Lee*, and *Warner* decisions also apply to the unfounded PTO assumption that Iline teaches processing a plurality of transactions in parallel, because there is no explanation, no description and no suggestion as to parallel transactions to be found in the teachings of Iline. Thus, the advisory action statement that “preventing ... from writing ... of Iline in case of parallel transactions” is a figment of imagination and the product of creative writing, not an actual teaching of such “parallel transactions” appearing in Iline. Again, to the extent that the PTO is to continue to suggest that Iline teaches “parallel transactions,” it must indicate where this teaching is found in Iline. Note the above-cited *Rijckaert* decision.

The advisory action also alleges that “judging whether any collision occurs’ equates to the step of TestResultWriter as taught by Iline in Code Listing A.” However, no possible “collision” occurs in Iline’s system so that it is difficult to understand the basis for the conclusion offered that the person skilled “in the art would understand the value of TestResultWriter reads on judging whether any collision occurs limitation.” It is respectfully submitted that such a conclusion lacking any evidence in the record is clearly improper, however. In this last regard, note that the above-noted *Zurko*, *Lee*, and *Warner* decisions that prohibit PTO expansion of reference teachings using unfounded assumptions and/or speculation in place of actual reference teachings.

Further note *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) requiring that:

[Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

In effect, the previous Action and the Advisory Action do little more than suggest that it may be possible to apply Iline's technique to a system in which collisions might be possible even though such a system is not taught or suggested by Iline. The previous Action and the Advisory Action seem then to allege that, when Iline's technique is applied to the system in which a collision could possibly occur, the occurrence of such a possible collision could be judged by some how using the step of TestResultWriter. Missing is any explanation of how the step of TestResultWriter would be used or adapted for such a purpose. In this regard, the members of TestResultWriter are reader, DataWriter, add, createChild, and getReader and no explanation appears as to which of these members are taught or understood to be *per se* useable to judge whether any "collision" occurs, much less if the "collision" defined by the present claims occurs.

In addition to this, with respect to the use of "copy" of the hierarchical data, the previous Action and the Advisory Action again simply assume that Iline teaches the claimed "judging whether a collision between one of reading access or writing access to be made by a first transaction with respect to a copy of the hierarchical data for the first transaction and another one of the reading access or writing access made by the second transaction with respect to a copy of the hierarchical data for the second transaction will occur or not." Once again, there is no disclosure about such use of copies of the hierarchal data for the first and second transactions set forth by Iline. Reading nonexistent teachings into the actual disclosure of Iline is not permitted just as trying to interpret the teachings of Iline divorced from the reference context is not permitted. In this last regard, *In re Kotzab* 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) notes that "[reference] statements cannot be

viewed in the abstract. Rather they must be considered in the context of the teaching of the entire reference.” This is not new law, note *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984) requiring "a fair reading of the prior art reference as a whole," and *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965) noting that "it is impermissible within the framework of §103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art."

Again, no matter what else might be said about the teachings of Iline, it cannot be said that Iline teaches or **reasonably** suggests “the first transaction and the second transaction are accepted at the same time as concurrent transactions for accessing the same location of the hierarchical data” (Claims 1, 19, and 20) or the judging of “whether or not the copy of a first transaction will conflict with the copy of a second transaction after execution of the first and second transaction” (Claim 21).

Accordingly, withdrawal of the rejection of independent Claims 1, 19, and 20 as being anticipated by Iline is respectfully requested along with allowance of independent Claim 21 that clearly patentably defines over Iline for all the reasons noted above.

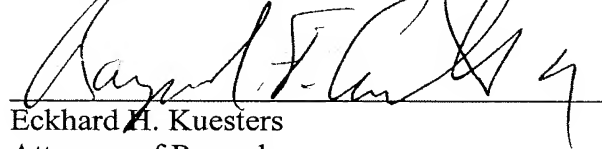
Further, as Claims 2-18 depend from Claim 1 and include all the subject matter thereof, these claims clearly patentably define over Iline for at least the reasons set forth above as to Claim 1. In addition, each of these dependent claims adds features that are further not taught or suggested by Iline and patentably define thereover for this reason as well. Therefore, withdrawal of the rejection of Claims 2-18 as being anticipated by Iline is also respectfully requested.

Application No. 10/765,145
Reply to Office Action of 05/22/07

Accordingly, it is respectfully submitted that no further issues remain outstanding in the present application, and that this application is clearly in condition for formal allowance and an early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,

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